Equality and Human Rights Commission

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Minutes of the Board call (9 December 2020)

Virtual Meeting held using Cisco Webex videoconferencing services

Wednesday 9 December 2020 (16:00-17:30)

Present:

Members:

Kishwer Falkner (Chair)
Caroline Waters (Deputy Chair)
Suzanne Baxter
Jessica Butcher
Pavita Cooper
David Goodhart
Alasdair Henderson
Susan Johnson
Martyn Jones
Helen Mahy
Mark McLane
Bernard Ribeiro
Lesley Sawers
Su-Mei Thompson

Officers:

Cath Denholm, Executive Director: Corporate Services and England
Melanie Field, Executive Director: Strategy, Policy and Wales
Rachel Fox, Principal: Inquiries and Intelligence
Rebecca Hilsenrath, Chief Executive Officer *(Commissioner ex officio)*
Jacqueline Killeen, Director: Compliance
Callum MacInnes, Principal: Corporate Governance
Alastair Pringle, Executive Director: Legal, Compliance and Scotland
Graham Wheaton, Senior Associate: Corporate Governance (Secretary)

1. Welcome, Introductions and Apologies for Absence

1.1 Kishwer Falkner welcomed attendees, noting that this was her first meeting as Chair and also the first meeting for new Commissioners Jessica Butcher, David Goodhart, Bernard Ribeiro and Su-Mei Thompson.

1.2 No apologies for absence had been received.

1.3 Kishwer proffered the Board's thanks to Caroline Waters for having done an excellent job in the role of Interim Chair from August 9th to November 30th.

2. Declarations of Interest

2.1 No declarations were made further to those already registered by Members.

3. Executive Summary of papers

3.1 Rebecca Hilsenrath outlined the context behind the two papers to be discussed at this meeting and noted that the Government were reviewing human rights legislation, the context of the pandemic and the associated changes in stakeholder engagement.

3.2 On the transgender paper, she recognised that there had been a discussion at the September Board meeting and today's update sought a number of decisions from Commissioners. In terms of timing, there was a requirement to reach a position in respect of the Commission's position on publication of the transgender guidance for schools, ahead of the forthcoming publication of guidance by the Scottish Government.

3.3 In relation to social care, the Commission is moving to a more proactive role, with the proposal to scope an inquiry.

4. Transgender issues

4.1 The Board confirmed they had read the paper. There followed a lengthy discussion in which the Board provided the following steer:

- Ask 1; Balance of rights – that substantive Board consideration should take place in the new year, and a brief would be prepared for the Board. **ACTION: Board members to advise Callum MacInnes if they wish to feed in their views.**

- Ask 2; Transgender Guidance for schools – It was noted that the Chair had approved a shorter version of the guidance. The Board decided, however, not to publish the guidance, as this would place an additional burden on schools at a time when they were under strain from managing the impact of the Covid19. Other considerations were that standalone guidance across all three nations was the best way to address the issue, to ensure consistency.

- Ask 3: Single sex services – The proposal to take further soundings from Government was agreed and the Executive were asked to proceed.

- Ask 4 : Gender Recognition Act (GRA) reform, Scotland – This was not expected to be taken up by the Scottish Parliament until after the May 2021 Scottish Parliamentary elections so no current action was envisaged. The Commission should also consider reviewing its position in relation to the age of application. **ACTION: Lesley Sawers to provide further guidance to the Chair and CEO on the Scottish context.**

- Ask 5: Gender identity and sexual orientation conversion therapies – The Commission should keep a watching brief on this issue. Board members also emphasised the importance of differentiating between different categories of conversion therapies.

- Ask 6: Litigation Strategy – It was felt that work on this should be continued. The Executive team will include an update on this as part of the Board development session currently being planned.

4.3 Board members further noted that:

a) the wider context of the transgender work and welcomed further Board discussion on this in the new year;

b) this was not as prominent an issue in Wales as it was in Scotland; and

c) Commissioners would appreciate more specific input as to the issues that transgender people want us to clarify or support for.

4.4 The Board felt that an Executive team led seminar on this topic would prove very useful to some members**. ACTION: Callum MacInnes to co-ordinate a session for interested Commissioners.**

5 Social Care

5.1 Alastair Pringle spoke to this paper, clarifying that this would not be an investigation but instead a Section 16 Inquiry. He explained that a different approach may need to be taken on this work in Scotland if approval from the Scottish Human Rights Commission was not forthcoming.

5.2 The work to date had been led by Caroline Waters with input from the Scotland, Wales and Disability Advisory Committees.

5.3 The Board agreed in principle that the Inquiry should go ahead on a three-nations basis if possible, although it was understood that, unless approval from SHRC was received, it may be two nations with alignment in Scotland. The Board emphasised the need for the inquiry to have a narrow focus and methodology to be clearly planned.

5.4 Board members commented that:

a) there was a need to focus on what the EHRC could uniquely add in this field that could be used with both the public and private sector audiences;

b) it would be important to engage with stakeholders across the country;

c) it would be important to consider consistent effective contract management care;

d) further clarity about how the issues under investigation relate to equality and human rights;

e) the right to Independent Living had been advocated and the issue of different age groups being treated differently should be included within the scope;

f) the Scotland Committee suggested that the inquiry was carried out at a GB level if possible; and

g) the Commission should consider pressure on Local Authority resources and funding, although there were examples where cost neutral changes could be beneficial.

5.4 The Chair thanked officers for a well-written and thought through paper.

6 AOB

6.1 To allow time for new and existing Commissioners time to get acquainted, the Chair invited Board members to discuss how they would like to make time to engage with each other in a less formal way, whilst the Coronavirus restrictions were in place and they were unable to meet in in person.

6.2 Commissioners agreed with the Chair's suggestion that they would hold voluntary sessions once a month, at which groups of Commissioners would discuss their wider work and interests. These sessions would include members of the senior leadership and Executive team and would allow for an opportunity for members to get to know of Commissioners' interests.

ACTION: Callum MacInnes to co-ordinate a sessions for interested Commissioners and Officers